

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7628

Joint Petition of Green Mountain Power Corporation,       )  
Vermont Electric Cooperative, Inc., and Vermont Electric    )  
Power Company, Inc. for a certificate of public good,        )  
pursuant to 30 V.S.A. Section 248, to construct up to a     )  
63 MW wind electric generation facility and associated       )  
facilities on Lowell Mountain in Lowell, Vermont, and     )  
the installation or upgrade of approximately 16.9 miles of    )  
transmission line and associated substations in Lowell,     )  
Westfield and Jay, Vermont                                        )

Order entered: 12/16/2011

**PROTECTIVE ORDER RE LEASE AGREEMENTS**

**I. INTRODUCTION**

On November 14, 2011, Green Mountain Power Corporation ("GMP") filed a Motion for Confidential Treatment of Confidential Business Information in Leases concerning certain financial terms in the following documents: (1) Windpark Lease and Easement Agreement by and between Nathan and Tucker Corrow, Douglas Corrow, Jeffrey Brown, and Gary Dubuque as Lessors, and GMP as Lessee dated February 15, 2010; and (2) Windpark Lease and Easement Agreement by and between Peter B. Mygatt and Deborah H. Mygatt as to Parcel 1, and Peter B. Mygatt as to Parcel 2 as Lessors, and GMP as Lessee dated April 9, 2010. On November 30, 2011, GMP filed additional documents related to the leases it filed on November 14, 2011, and requested that one of those documents, an Amendment of Windpark Lease and Easement Agreement and Windfarm Neighbor Easement Agreement by and between Peter B. Mygatt and Deborah H. Mygatt as to Parcel 1, and Peter B. Mygatt as to Parcel 2 as Lessors, and GMP as Lessee dated August 5, 2011, be included in the documents for which it sought confidential

treatment under its November 14, 2011, motion. GMP's motion requests that the information remain confidential for the life of the agreements.<sup>1</sup>

No party opposed GMP's motion.

## **II. DISCUSSION**

To promote full public understanding of the basis for its decisions, this Board has actively taken steps to limit the amount of information subject to protective orders. We have encouraged parties to remove material from that protection to the extent possible. Since 2001, we have required petitioners seeking a protective order to submit a document-specific (or information-specific) averment of the basis for keeping confidential any document (or information) that they wish to be kept under seal. This arrangement appropriately places a heavy burden on the party seeking confidentiality to justify that decision. It also ensures that counsel for the party seeking confidentiality has actually reviewed and considered the relevant confidentiality factors, as they relate to the specific document or information at issue.<sup>2</sup> Generally, we only resolve disputes about information when there is a genuine disagreement about its confidential nature.<sup>3</sup> However, even when the motion is uncontested the Board will review the motion and supporting averment or averments to ensure that the moving party has presented a *prima facie* case for keeping the document or information under seal.

In determining whether to protect confidential information, we consider three issues:

- (1) Is the matter sought to be protected a trade secret or other confidential research, development, or commercial information which should be protected?
- (2) Would disclosure of such information cause a cognizable harm sufficient to warrant a protective order?

---

1. The agreements all have terms of 47 years and 11 months, unless terminated sooner according to their terms and conditions.

2. *Investigation into General Order No. 45 Notice filed by Vermont Yankee Nuclear Power Corporation re: proposed sale of Vermont Yankee Nuclear Power Station to Entergy Nuclear Vermont Yankee, LLC*, Docket No. 6545 ("*Entergy Docket*"), Order of 11/9/01 at 5-6.

3. *Id.* at 6.

- (3) Has the party seeking protection shown "good cause" for invoking the Board's protection?<sup>4</sup>

GMP asserts that the financial information in the agreements should be kept confidential for the following reasons:

- Disclosure of the financial terms would reveal personal income information of the lease counterparties, and personal income information is typically treated as confidential. Disclosure of the information would cause the counterparties' personal income information to become general knowledge in their communities and would become the subject of unjustified interest;
- Disclosure of the financial terms would make it more difficult for GMP to negotiate cost-effectively similar agreements in the future;
- It is a standard commercial practice to record memoranda of commercial leases summarizing their terms, but omitting commercially sensitive information.

We have reviewed GMP's motion and supporting averment, and we have applied the existing standard, and conclude that GMP has made a *prima facie* showing that the financial information in the agreements is commercially sensitive information that should be protected, that disclosure would cause a cognizable harm sufficient to warrant a protective order, and that there is good cause for protecting that information. Therefore, GMP's motion is granted.

We have consistently reminded parties who seek confidential treatment for materials that they have a continuing obligation to reexamine protected information and to release material that would not cause competitive harm, or that has otherwise been made public (even during the course of this proceeding), particularly testimony and exhibits. We require GMP to do the same here. At this time, we are not explicitly ruling that any specific information should remain confidential for the full life of the agreements. Parties and other persons retain the ability to challenge whether information encompassed by this ruling should be removed from the special protections we adopt in this Order or removed completely from protection as confidential information.

---

4. See e.g., *Entergy Docket*, Order of 3/29/02 at 2.

### **III. ORDER**

Therefore, IT IS HEREBY ORDERED that the Confidential Information provided by GMP (as set out in an attachment to this Order) shall be treated in this proceeding as follows:

1. All documents that are subject to this Order as confidential information, and any documents that discuss or reveal documents that constitute confidential material, shall be placed in a sealed record by filing such information in sealed envelopes or other appropriate sealed containers on which shall be endorsed the caption and docket number of the proceeding, the nature of the content (*e.g.*, exhibit, report, etc.), and a statement that it shall not be opened or released from the custody of the Clerk of the Board except by Order of the Board.

Notwithstanding such a statement, the members of the Board, any employee or consultant specifically authorized by the Board to assist the Board in this proceeding, and any Hearing Officer appointed to this Docket may have access to such sealed confidential information, but shall not disclose such information to any person.

2. At any hearing or conference in this proceeding, no persons, other than those who have signed or agreed to be bound by this Order and any Protective Agreement approved in this Docket, and those whom the Board has expressly authorized to have access to this confidential information, shall be permitted to give, hear or review testimony given or held with respect to this confidential information.

3. Each Board stenographer or reporter in this proceeding shall acknowledge and be bound by this Order. Each such Board stenographer or reporter shall be instructed to and shall start a separate transcription for testimony or discussion on the record of confidential information. Such transcription shall be marked "Confidential" and shall be sealed and filed with the Clerk of the Board, and copies of the same shall be made available only to those persons authorized to view such information. Such transcription shall, in all other respects, be treated as confidential information pursuant to this Order.

4. The Board retains jurisdiction to make such amendment, modifications and additions to this Order as it may, from time to time, deem appropriate, including any such amendments, modifications or additions resulting from a motion made pursuant to the Protective Agreement. Any party or other person may apply to the Board for an amendment, modification or addition of this Order.

Dated at Montpelier, Vermont, this 16<sup>th</sup> day of December, 2011.

<u>s/James Volz</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/David C. Coen</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/John D. Burke</u>	)	

OFFICE OF THE CLERK

FILED: December 16, 2011

ATTEST: s/Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: [psb.clerk@state.vt.us](mailto:psb.clerk@state.vt.us))*

Docket 7628  
Attachment to  
Protective Order  
dated 12/16/11

Document	Information
Windpark Lease and Easement Agreement by and between (1) Nathan and Tucker Corrow, (2) Douglas Corrow, (3) Jeffrey Brown, and (4) Gary Dubuque as Lessors, and GMP as Lessee dated February 15, 2010	p. 1 Amount of "Base Payment" p. 2 Amount of "Minimum Operating Payment" p. 3 Amount of "Royalty Percentage" p. 9 Maximum change payment amount
Windpark Lease and Easement Agreement by and between Peter B. Mygatt and Deborah H. Mygatt as to Parcel 1, and Peter B. Mygatt as to Parcel 2 as Lessors, and GMP as Lessee dated April 9, 2010	p. 1 Amount of "Base Payment" p. 2 Amount of "Minimum Operating Payment" p. 3 Amount of "Royalty Percentage" p. 9 Maximum change payment amount
Amendment of Windpark Lease and Easement Agreement and Windfarm Neighbor Easement Agreement by and between Peter B. Mygatt and Deborah H. Mygatt as to Parcel 1, and Peter B. Mygatt as to Parcel 2 as Lessors, and GMP as Lessee dated August 5, 2011	p. 3 Amount of "Minimum Operating Payment"